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9 Attorneys for Plaintiff YOU WALK AWAY, LLC

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 YOU WALK AWAY, LLC, a California
13 corporation,

14 Plaintiff,

15 vs.

16 CRISIS MANAGEMENT LLC, an Arizona
17 corporation, and WALK AWAY PLAN LLC,
18 a business entity of unknown form,

19 Defendants.

CASE NO. 08 CV 0529 WQH BLM

**DECLARATION OF NICHOLAS S.
BARNHORST IN SUPPORT OF
PLAINTIFF YOU WALK AWAY, LLC'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS, STAY, OR
TRANSFER VENUE TO THE
DISTRICT OF ARIZONA**

20 I, Nicholas Barnhorst, declare:

21 1. I am an attorney duly admitted to the bar in the State of California. I am counsel
22 of record for Plaintiff You Walk Away, LLC ("You Walk Away"). I have personal knowledge
23 of the facts set forth in this Declaration and, if called as a witness, would be competent to
24 testify thereto.

25 2. On February 29, 2008, I sent a letter addressed to the Chief Executive Officer
26 and General Counsel of Walk Away Plan, LLC at the address provided on the
27 www.youwalkaway.com website. A true and correct copy is attached as Exhibit 1.
28

3. On Thursday, March 13, 2008, at approximately 4:07 p.m., I contacted Crisis Management's attorney of record, James Rigberg, on his cellular telephone. Mr. Rigberg advised me that he would return my phone call when he returned to his office

4. Several minutes later, on the same day, Mr. Rigberg returned my phone call and advised that he had a colleague with him in the office. Mr. Rigberg identified that colleague as Dave Bray. I stated to Mr. Rigberg that the purpose of the telephone call was to follow-up to my letter dated February 29, 2008, regarding the Walk Away Plan name and website. I told Mr. Rigberg that You Walk Away would prefer to reach an agreement without resorting to court involvement, if possible. Mr. Rigberg responded that he was consumed with finishing a motion that he and Mr. Bray were working on, and requested that he be provided with time over the weekend to determine how to respond. Our call ended approximately between 4:30 and 5:00 p.m. on March 13, 2008.

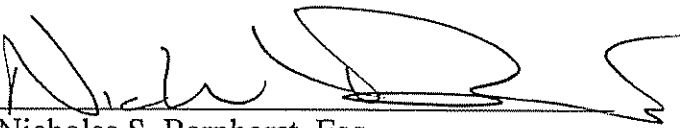
5. I have received no further communication or correspondence from Mr. Rigberg.

6. Having not heard from Mr. Rigberg, You Walk Away filed its Complaint in the United States District Court for the Southern District of California on March 21, 2008.

7. The defendants in this action, Crisis Management LLC and Walk Away Plan LLC, were served with Summons and a copy of the Complaint in this action on March 26, 2008.

8. To my knowledge, You Walk Away has not been served with Summons or the Complaint in Crisis Management's action pending in the United States District Court for the District of Arizona.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 5, 2008, at San Diego, California.



Nicholas S. Barnhorst, Esq.

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 ROBERT CAPLAN
 GERALD L. MCMAHON
 REGINALD A. VITEK
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ALSO ADMITTED IN WISCONSIN

February 29, 2008

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chief Executive Officer
 Walk Away Plan, LLC
 6006 N. 83rd Ave, Suite 203
 Glendale, AZ 85303

General Counsel
 Walk Away Plan, LLC
 6006 N. 83rd Ave, Suite 203
 Glendale, AZ 85303

RE: You Walk Away, LLC adv. Walkawayplan.com
 YOU WALK AWAY
 USPTO Application No. 77384074
 Our File No. 13998.63596

To Whom It May Concern:

This firm represents You Walk Away, LLC ("You Walk Away") owner of the YOU WALK AWAY trademark, youwalkaway.com, and the above-referenced United States Patent and Trademark Office application for registration. You Walk Away adopted the mark YOU WALK AWAY and the url youwalkaway.com for use in connection with foreclosure information and consultation and is currently using the mark and website in trade. It has come to our client's attention that you have subsequently commenced using the terms WALK AWAY PLAN and walkawayplan.com in connection with foreclosure information and consultation.

The YOU WALK AWAY trademark is an important asset of our clients. Consumers have come to associate the YOU WALK AWAY mark with our client and its services. The trademark YOU WALK AWAY, Application No. 77384074, is pending for approval in the United States Patent and Trademark Office. This use and federal application confer on our client the exclusive right to use the name YOU WALK AWAY and youwalkaway.com in trade. Your use of the term WALK AWAY PLAN and the website walkawayplan.com (which bears a striking resemblance to our client's distinctive youwalkaway.com website), particularly in the same channel of trade, infringes on our client's trademark and produces a likelihood of confusion among consumers. Consumers are likely to believe your services are endorsed by or affiliated with YOU WALK AWAY.

Walk Away Plan, LLC
Our File No. 13998.63596
February 29, 2008
Page 2

Your use of the term WALK AWAY PLAN and the website walkawayplan.com appears to be a violation of the Lanham Act governing trademarks in the United States. Violations of the Lanham Act may subject the infringer to injunctive relief and monetary damages including an award of the infringer's profits, the trademark owner's lost profits, attorney's fees, costs and treble damages. Additionally, it appears that your activities constitute acts of false designation of origin, false advertising, and unfair competition under various state laws. You Walk Away is prepared to pursue all remedies available to enforce its rights.

On behalf of You Walk Away, we insist that you immediately discontinue use of the terms WALK AWAY PLAN and walkawayplan.com. We request written confirmation within 10 days of the date of this letter that you have voluntarily complied with this request or we will have no choice but to take further legal action. Please sign this letter where indicated below and return it to us to acknowledge that you have agreed to cease all use of the terms WALK AWAY PLAN and walkawayplan.com.

Very truly yours,



Nicholas S. Barnhorst
Seltzer Caplan McMahon Vitek
A Law Corporation

ACKNOWLEDGED & AGREED

Walk Away Plan, LLC

By: _____

Title